

## Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 NEAE-00 CIAE-00 DODE-00 PM-04  
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FM AMEMBASSY KABUL  
TO SECSTATE WASHDC PRIORITY 1239  
INFO AMEMBASSY ISLAMABAD  
AMEMBASSY MOSCOW  
AMEMBASSY NEW DELHI  
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C O N F I D E N T I A L SECTION 1 OF 3 KABUL 0799

E. O. 11652: GDS  
TAGS: AF, PINT, PGOV  
SUBJECT: NEW DRAFT AFGHAN CONSTITUTION

REF: KABUL 661

1. SUMMARY. A NEW DRAFT CONSTITUTION FOR AFGHANISTAN HAS BEEN  
PUBLISHED AND SUBMITTED TO A NATIONAL CONSTITUENT ASSEMBLY  
('LOYA JIRGAH') NOW MEETING IN KABUL. BY SUBMITTING THE DRAFT,  
GOVERNMENT OF AFGHANISTAN PRESIDENT MOHAMMAD DAOUD HAS FULFILLED  
A COMMITMENT MADE  
TO GIVE HIS COUNTRY A CONSTITUTION BY MARCH  
1977. THE PRESIDENT HAS THUS TAKEN A STEP TOWARD GIVING LEGITIMACY  
TO THE REGIME HE SET UP BY OVERTHROWING THE MONARCHY IN 1973 AND  
HE HAS ESTABLISHED SOME GROUND RULES FOR AN EVENTUAL SUCCESSION  
TO THE PRESIDENCY.

THE NEW DRAFT WOULD MANDATE AN "INTERIM PERIOD" OF ALMOST  
THREE YEARS BEFORE THE NEW CONSTITUTION TAKES FULL EFFECT. DAOUD  
WILL CONTINUE TO RUN THE COUNTRY BY DECREE DURING THIS LENGTHY  
INTERIM PERIOD. PROVISIONS FOR THIS INTERIM PERIOD IMPLY AN  
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EMERGENCY-SUCCESSION SYSTEM, BUT LEAVE ROOM FOR FLEXIBILITY --  
AND CONSIDERABLE UNCERTAINTY. THE CURRENT LOYA JIRGAH IS LIKELY  
TO APPROVE THESE PROVISIONS AS WELL AS THE CONSTITUTION AS A WHOLE  
-- POSSIBLY WITH SOME AMENDMENTS -- AND TO ELECT DAOUD PRESIDENT  
FOR A SIX-YEAR TERM. DAOUD WILL THEN CHOOSE ONE OR MORE VICE  
PRESIDENTS AND A CABINET.

THE STRUCTURE OF THE GOVERNMENT ENVISIONED BY THE NEW CONSTITUTION IS DOMINATED AND CONTROLLED BY THE PRESIDENT. HIS CURRENT AUTHORITARIAN REGIME IS THEREFORE INSTITUTIONALIZED. THE DRAFT CONSTITUTION WOULD INSTITUTIONALIZE THE LOYA JIRGAH AND CREATE A NEW PARLIAMENT (MELI JIRGAH) TO BE FORMED THREE YEARS HENCE BY NATIONAL ELECTIONS. A SINGLE PARTY IS PROPOSED, THE "PARTY OF THE NATIONAL REVOLUTION" (HEZB-E-ENQELAB-E-MELI). THE PRESIDENT CLEARLY DOMINATES ALL THESE OTHER INSTITUTIONS. THEY REPRESENT DAOUD'S ASSESSMENT OF THE REALITIES OF AFGHAN POLITICS AND HIS ATTEMPT TO BUILD A FRAMEWORK FOR GRANTING THE AFGHAN PEOPLE A GREATER VOICE IN THEIR CENTRAL GOVERNMENT -- BUT AT A TIME AND IN A MANNER OF HIS OWN CHOOSING.

THE DRAFT CONSTITUTION ALSO CONTAINS SOME AFFIRMATIVE IF LIMITED STATEMENTS ON HUMAN RIGHTS AND SETS UP A JUDICIARY NOT UNDER THE PRESIDENT'S IMMEDIATE CONTROL.

THE DRAFT CONSTITUTION DOES NOT, AS FAR AS WE CAN TELL, AFFECT THE FIRST FAMILY'S (CALLED MOHAMMADZAIS) WIDESPREAD INFLUENCE. NO REFERENCE IS MADE TO THE FORMER ROYAL FAMILY, BUT THERE IS NO OBSTACLE TO THEIR RETURN FROM EXILE. HOWEVER THE CONSTITUTION PROHIBITS CHANGE OF THE GOVERNMENT FROM A "REPUBLICAN" BASE. END SUMMARY.

2. IN A SIGNIFICANT MOVE IN MODERN AFGHAN HISTORY, PRESIDENT MOHAMMAD DAOUD HAS SUBMITTED A DRAFT CONSTITUTION TO THE NATIONAL CONSTITUENT ASSEMBLY NOW MEETING IN KQBUL. MEETING A COMMITMENT HE SET FOR HIMSELF IN JULY 1975, TO GIVE HIS COUNTRY A CONSTITUTION BY MARCH 1977, DAOUD ALSO HAS TAKEN A STEP TO GIVE LEGITIMACY TO CONFIDENTIAL

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HIS REGIME AND ALSO TO ESTABLISH GROUND RULES FOR SUCCESSION TO THE OFFICE OF THE CHIEF EXECUTIVE, A PROVISION THAT WILL RELIEVE A NAGGING UNCERTAINTY THAT CAME INTO BEING WITH THE "REPUBLIC." THE DRAFT CONSTITUTION IS DIVIDED INTO THIRTEEN CHAPTERS CONTAINING 131 ARTICLES. THE FULL ENGLISH TEXT WILL BE POUCHED UNDER A COVERING AIRGRAM JANUARY 31. HIGHLIGHTS ARE AS FOLLOWS:

3. THE PRESIDENCY. THE DRAFT CONSTITUTION PROVIDES FOR A POWERFUL PRESIDENT -- IN EFFECT INSTITUTIONALIZING THE CURRENT REGIME -- WHO SERVES ALSO AS LEADER OF THE SINGLE PERMITTED NATIONAL PARTY - THE NATIONAL REVOLUTIONARY PARTY (NRP). THE NATIONAL CONSTITUENT ASSEMBLY (LOYA JIRGAH) PRESENTLY MEETING IN KABUL WILL, AFTER APPROVING THE CONSTITUTION -- POSSIBLY WITH SOME AMENDMENTS -- ELECT THE PRESIDENT (OUR MONEY IS ON DAOUD) FOR A SIX-YEAR TERM BY A TWO-THIRDS MAJORITY. FUTURE PRESIDENTS WILL ALSO BE ELECTED FOR SIX-YEAR TERMS BY LOYA JIRGAHS (NATIONAL CONSTITUENT ASSEMBLIES) UPON NOMINATION BY THE NRP. PROVISIONS OF THE PROPOSED CONSTITUTION ARE CLEAR WITH REGARD TO THE EMERGENCY SUCCESSION TO THE PRESIDENCY AFTER FULL IMPLEMENTATION OF THE CONSTITUTION TAKES

PLACE ON NOVEMBER 22, 1979. ARTICLES PROVIDE THAT THE PRESIDENT OF THE PARLIAMENT (MELI JIRGAH) WILL ACT AS PRESIDENT IN THE EVENT THE HEAD OF STATE DIES IN OFFICE UNTIL A NEW LOYA JIRGAH CAN BE CONVENED WITHIN TEN DAYS AND THE NEW PRESIDENT ELECTED WITHIN THIRTY DAYS. THE DRAFT CONSTITUTION MAKES NO SPECIFIC PROVISION HOWEVER FOR SUCCESSION SHOULD THE PRESIDENT DIE IN OFFICE BEFORE THE DATE WHEN A NATIONAL ASSEMBLY HAS BEEN ELECTED AND IS SITTING. THE CONSTITUTION DOES HOWEVER PROVIDE FOR A PRESIDENTIAL APPOINTMENT OF "A VICE PRESIDENT" OR "VICE PRESIDENTS," AND WE WERE TOLD BY ONE PROMINENT MEMBER OF THE OFFICIAL COMMITTEE WHICH REVIEWED THE CONSTITUTION THAT A TAKE-OVER BY THE VICE PRESIDENT IS "IMPLICIT" IN CASE OF AN EMERGENCY IN THE INTERIM PERIOD AND PENDING THE ELECTION OF A NEW PRESIDENT BY A LOYA JIRGAH. THIS ACCORDS TOO WITH AN ARTICLE CALLING FOR "THE PRESIDENCY" TO CONVENE A LOYA JIRGAH IN THE EVENT OF DEATH OF THE PRESIDENT. ANOTHER SECTION OF THE DRAFT CONSTITUTION PROVIDES THAT THE VICE PRESIDENT OR VICE PRESIDENTS WILL ACT IN BEHALF OF THE PRESIDENT WHEN THE

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LATTER IS ILL OR TRAVELS ABROAD.

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FM AMEMBASSY KABUL

TO SECSTATE WASHDC PRIORITY 1240

INFO AMEMBASSY ISLAMABAD

AMEMBASSY MOSCOW

AMEMBASSY NEW DELHI

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4. ARTICLE 41, CHAPTER IV OF THE DRAFT CONSTITUTION SPECIFIES THAT "FOR THE REFLECTION OF

SOCIAL WISHES AND POLITICAL EDUCATION OF THE PEOPLE OF AFGHANISTAN UNTIL SUCH TIME THAT THESE WISHES ARE REALIZED AND ATTAIN MATURITY" A SINGLE NATIONAL REVOLUTIONARY PARTY (HEZB-E-ENQELAB-E-MELI) WILL DIRECT THE POLITICAL LIFE OF THE COUNTRY. THE ARTICLE DESCRIBES THIS PARTY AS THE FOUNDER AND FORERUNNER OF THE "26 SARATAN" REVOLUTION (AFGHAN DATE CORRESPONDING TO JULY 17, 19 WHEN DAOUD CAME TO POWER BY A COUP D'ETAT). IN ADDITION TO THIS LEGAL STATUS THE PARTY HAS CONSTITUTIONAL ROLES TO PLAY. THE PARTY WILL FOR EXAMPLE NOMINATE MEMBERS OF THE MELI JIRGAH. IN THE SECTION INSTITUTIONALIZING AFGHANISTAN'S LOYA JIRGAH IT IS SPECIFIED THAT THE CENTRAL COMMITTEE OF THE PARTY WILL AUTOMATICALLY BE MEMBERS, AND MELI JIRGAH MEMBERS WHO HAVE BEEN PROPOSED BY THE PARTY WILL IN TURN COMPRISE A LARGE BLOC OF LOYA JIRGAH MEMBERS. IT IS CONFIDENTIAL

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POSSIBLE THAT MEMBERS OF DAOUD'S CENTRAL COMMITTEE WHO CAME TO POWER IN 1973 WILL BE SUBSUMED INTO THIS PARTY ORGAN. THE PARTY ALSO HAS RESPONSIBILITY FOR NOMINATING THE PRESIDENT, WHO MUST THEN BE APPROVED BY TWO-THIRDS VOTE OF THE LOYA JIRGAH. IN CHAPTER V II ("GOVERNMENT") THE AFGHAN ADMINISTRATION IS CHARGED WITH IMPLEMENTING THE POLICIES OF THE PARTY AS WELL AS THE LAW.

5. THE MELI JIRGAH AND LOYA JIRGAH. THE AFGHAN NATIONAL PARLIAMENT (MELI JIRGAH) IS DESCRIBED IN CHAPTER V, ARTICLES 49-64. AS STATED, NOMINATIONS WILL BE BY THE NATIONAL REVOLUTIONARY PARTY WHICH MUST DRAW 50 PERCENT OF ITS NOMINEES FROM AMONG "FARMERS AND LABORERS". THE MELI JIRGAH WILL MEET ANNUALLY FOR FOUR MONTHS BEGINNING NOVEMBER 22 ("QAU 1 OF THE AFGHAN CALENDAR"). THE MELI JIRGAH WILL "STUDY AND CONSIDER" BILLS TO BE PROPOSED BY THE GOVERNMENT AND THE JUDICIARY. A SUBSEQUENT ARTICLE STATES THAT "WITHIN THE COMPETENCE" OF THE MELI JIRGAH ARE DECISIONS ON BUDGET, RATIFICATIONS OF INTERNATIONAL TREATIES, AND DISPATCH OF TROOPS ABROAD -- BUT IT IS UNCLEAR WHETHER THE MELI JIRGAH MAY INITIATIVE LEGISLATION IN THESE (OR ANY ) FIELDS.

THE DRAFT CONSTITUTIONS WITH CHAPTER INSTITUTIONALIZES THE HISTORIC AFGHAN CUSTOM OF

"LOYA JIRGAH", MAKING IT A KIND OF SUPER LEGISLATIVE BODY WITH SPECIFIC RESPONSIBILITIES AND TO BE CALLED AT SPECIFIC TIMES. ALL MEMBERS OF THE MELI JIRGAH ARE AUTOMATICALLY MEMBERS OF THE LOYA JIRGAH, PLUS THE CENTRAL COMMITTEE OF THE PARTY, MEMBERS OF THE GOVERNMENT, THE HIGH COUNCIL OF THE ARMY, MEMBERS OF THE HIGH COURT OF THE JUDICIARY, CONFIDENTIAL

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FIVE TO EIGHT PERSONS REPRESENTATING EACH OF THE SEVERAL PROVINCES PLUS THIRTY PEOPLE SELECTED BY THE PRESIDENT OR "HEAD OF STATE", A NAME THE AFGHANS PREFER. THE HEAD OF STATE SERVES AS PRESIDENT OF THE LOYA JIRGAH WHICH WILL BE CONVENED: (1) TO AMEND AND CHANGE THE CONSTITUTION; (2) TO ELECT OR ACCEPT THE RESIGNATION OF THE HEAD OF STATE; (3) TO PASS DECLARATIONS OF WAR OR TO APPROVE AN ARMISTICE; (4) TO CONSIDER GRAVE AND UNUSUAL SITUATIONS AS OCCASIONS DICTATE.

THE LOYA JIRGAH AT ITS INAUGURATION WILL SELECT ITS OWN VICE PRESIDENT AND TWO SECRETARIES BY MAJORITY VOTE.

6. PROPOSED COUNCILS. THE DRAFT CONSTITUTION PROVIDES FOR APPOINTMENT BY THE PRESIDENT OF A HIGH COUNCIL OF THE ARMY AND A HIGH JUDICIAL COUNCIL, WHICH IS REFERRED TO IN THE ENGLISH TEXT AS "SUPREME COURT". THE HIGH JUDICIAL COUNCIL HAS SOME INDEPENDENCE AND CONSIDERABLE AUTHORITY FOR ADMINISTERING JUSTICE THROUGHOUT THE COUNTRY AND FRAMING LAWS. THE COUNCIL CONSISTS OF NINE MEMBERS TO BE NAMED BY THE HEAD OF STATE, BUT APPARENTLY ONCE APPOINTED, MEMBERS ARE ASSURED REASONABLE TENURE

THAT ARTICLE 107 AUTHORIZES THE PRESIDENT TO "REVIEW" APPOINTMENTS ONLY EVERY FIVE YEARS.

COMMENT: IN THESE PROVISIONS REGARDING THE NRP, THE MELI AND LOYA JIRGAHS AND THE HIGH JUDICIAL COUNCIL, DAOUD IS UNDOUBTEDLY EXERCISING HIS SEASONED JUDGMENT WITH REGARD TO THE REALITIES OF POLITICS IN AFGHANISTAN. HIS ATTEMPT APPEARS ONE OF BUILDING THE FRAMEWORK FOR REPRESENTATIVE INSTITUTIONS FOR A TIME IN THE FUTURE WHEN, IN HIS VIEW, THE AFGHAN PEOPLE WILL HAVE MATURED AND BE ABLE TO EMPLOY SUCH INSTITUTIONS. OBVIOUSLY, WE CAN'T PREDICT WHETHER AND HOW THIS ATTEMPT WILL WORK. IN THE MEANTIME, THE PRESIDENT CLEARLY DOMINATES THESE OTHER INSTITUTIONS. END COMMENT.

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AMEMBASSY NEW DELHI  
AMEMBASSY TEHRAN

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7. TRANSITION. AMONG THE MOST INTERESTING CHAPTERS OF THE DRAFT CONSTITUTION ARE THE FINAL TWO WHICH DEAL WITH THE CHANGE-OVER FROM THE PRESENT SYSTEM TO THE GOVERNMENT FOR WHICH THE DRAFT CONSTITUTION PROVIDES. UPON APPROVAL OF THE NEW CONSTITUTION, THE PRESIDENT WILL ABOLISH THE PRESENT GOVERNMENT, BUT IS PERMITTED CONSIDERABLE TIME IN ESTABLISHING NEW CONSTITUTIONAL ORGANS. THE TRANSITIONAL CHAPTER REQUIRES THE NEWLY ELECTED PRESIDENT TO CONVENE THE FIRST MELI JIRGAH ON NOVEMBER 22, 1979. DURING THIS TRANSITIONAL PERIOD CONSTITUTIONAL POWERS ACCRUING TO THE MELI JIRGAH WILL BE HELD BY THE PRESIDENT. THE PRESIDENT MUST ASSEMBLE THE HIGH JUDICIAL COUNCIL DURING JUNE 1978, AND UNTIL THAT TIME THE PRESIDENT WILL "TAKE MEASURES FOR SECURING THE PERFORMANCE OF THE COUNCIL'S DUTIES". DURING THE TRANSITIONAL PERIOD THE PRESIDENT IS CHARGED WITH "ENFORCING AND PROCLAIMING" THE CHARTER OF THE NATIONAL REVOLUTIONARY PARTY AND ALSO ESTABLISHING THE HIGH COUNCIL OF THE ARMY.

8. OTHER POINTS OF INTEREST. THE DRAFT CONSTITUTION CHAPTER IV DECLARES THE AFGHANS MAY NOT BE FORCEABLY EXPELLED FROM THEIR COUNTRY NOR MADE TO LIVE ABROAD, WHICH SEEMS TO INDICATE THAT THE FORMER ROYAL FAMILY, NOW LIVING IN ITALY, MAY RETURN AS THEY  
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WISH. UNDER THE DRAFT CONSTITUTION'S SECTION DEALING WITH AMENDMENTS IT IS FORBIDDEN THAT THE CONSTITUTION BE CHANGED CONTRARY TO ISLAMIC PRINCIPLES OR THE PRINCIPLES OF THE REPUBLICAN REGIME -- THE LATTER CLEARLY BEING AN ATTEMPT PERMANENTLY TO RULE OUT ANY CHANCE OF A LEGAL RESTORATION OF THE MONARCHY. THE ECONOMIC CHAPTER IS STRONGLY STATIST IN TONE AND CONFERS OWNERSHIP OF NATIONAL RESOURCES AND MAJOR INDUSTRIES AND ECONOMIC INSTITUTIONS UPON THE STATE. CONTRARY TO SOME EARLIER PREDICTIONS, THERE IS NO ATTEMPT IN THE DRAFT CONSTITUTION TO ERODE THE POSITION OF THE OLIGARCHIC FIRST FAMILY (THE MOHAMMADZAIS) WHICH HAS DOMINATED AFGHANISTAN'S INSTITUTIONS FOR OVER A CENTURY.

9. HUMAN RIGHTS. FOURTH CHAPTER OF THE CONSTITUTION'S DRAFT CONTAINS GUARANTEES AGAINST DISCRIMINATION AND GIVES RIGHT TO VOTE TO ALL AFGHANS OVER EIGHTEEN. TORTURE AND DEGRADING PUNISHMENT ARE PROHIBITED, AND THE RIGHT OF ASSEMBLY AND FREEDOM OF COMMUNICATIONS ASSURED "IN ACCORDANCE WITH THE LAW".

10. IT SHOULD BE RECALLED THAT THE LOYA JIRGAH WHICH CONVENED JANUARY 30 HAS BEEN ASKED TO DISCUSS THE CONSTITUTION, AND THAT PERSONS WHO HAVE BEEN RESPONSIBLE FOR STUDYING THE CONSTITUTION WILL BE GIVEN THE TASK OF EXPLAINING AND JUSTIFYING ITS PRINCIPLES. THE LOYA JIRGAH MAY MAKE SOME AMENDMENTS BEFORE APPROVING THE CONSTITUTION, FOLLOWING WHICH, IN ACCORDANCE WITH THE NEW CONSTITUTION, IT WILL ELECT DAOUD PRESIDENT, AND DAOUD WILL APPOINT ONE OR MORE VICE PRESIDENTS AND HIS CABINET.  
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